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INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

Case No. 1

MOTION No. \_\_\_\_\_

THE UNITED STATES OF AMERICA, et al,

vs.

ARAKI, Sadao, et al, Defendants.

MOTION OF HIROTA, Koki, TO QUASH CERTAIN  
COUNTS AND PARTS OF THE INDICTMENT.

Now comes the defendant, Hirota, Koki, by his duly appointed attorneys of record, and moves the Honorable, The International Military Tribunal for the Far East, to quash the certain hereinafter described counts and parts of the alleged indictment heretofore filed with the Tribunal on 3 May 1946. The portions of the indictment sought to be quashed are:

1. Counts 1 to 17, inclusive, and the alleged preamble to such counts;
2. Counts 19 to 25, inclusive;
3. Counts 27 to 35, inclusive;
4. Counts 37 to 47, inclusive, and the alleged preamble to such counts; and
5. Count 52.

1.

The indictment was prepared and filed by a large group of prosecutors representing eleven sovereign governments. The prosecutors were appointed by General MacArthur, acting in his capacity as Supreme Commander, Allied Powers for the Far East. General MacArthur has not heretofore been authorized or

empowered by the Constitution or any law of the United States to appoint prosecutors representing the United States of America and the Commonwealth of the Philippines to an International Prosecution Staff, or to associate or pool American interests and powers in a military prosecution, and his authority to appoint any military tribunal was limited solely to the appointment of an American military court or commission.

## II.

The action of General MacArthur in accepting an office and place of trust from foreign sovereign governments and undertaking to appoint prosecutors to such International Prosecution Staff to represent such foreign governments was and is in violation of Article 1, Section 9, Clause 8 of the Constitution of the United States of America, which reads in part: "And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince or foreign State," and of Article 1, Section 8, Clause 14 of the Constitution of the United States of America which provides that the Congress has the sole power "To make Rules for the Government and Regulation of the land and naval forces" of the United States of America.

## III.

The indictment was prepared and lodged with the Court by a body of prosecutors acting entirely without the support and sanction of any body of law in the world.



IV.

And for other matters appearing on the face of  
the indictment to be argued.

HIROTA, Koki,  
By

/s/ Tadashi Hanai  
Tadashi Hanai  
Japanese Counsel

/s/ David F. Smith  
David F. Smith  
American Counsel

To:

The International Military Tribunal for the Far East;

And to:

The General Secretary Thereof.